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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD CHARLES BISHOP,

Defendant and Appellant.

F033845

(Super. Ct. No. 26232A, 26326A,  
26375A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Coleen Ryan, Judge.

Tami J. Buscho, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner and Robert R. Anderson, Chief Assistant Attorneys General, Jo Graves, Assistant Attorney General, Michael J. Weinberger, J. Robert Jibson and Judy Kaida, Deputy Attorneys General, for Plaintiff Respondent.

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Defendant filed an appeal following a two-year extension of his commitment as a sexually violent predator (SVP), which started on October 8, 1998. Defendant's notice of appeal was filed late, but we granted habeas corpus relief to permit him to file a late notice, which was filed on August 12, 1999. On July 18, 2001, we requested

supplemental briefing on whether the appeal should be dismissed as moot since defendant's commitment expired during the pendency of this appeal.<sup>1</sup>

### **DISCUSSION**

Defendant argues that unlike the defendant in *People v. Cheek*, his "confinement" has not "terminated" during the pendency of the appeal. He points out that he was committed for a new two-year term on a new commitment proceeding and remains confined. However, contrary to defendant's assumption with regard to *Cheek*, there is nothing in the court's opinion that indicates Cheek had been released. Rather, the appeal was dismissed because the commitment under review had expired during the pendency of the appeal, and not because Cheek had been released and was no longer an SVP. (*People v. Cheek, supra*, 25 Cal.4th at pp. 897-898.)

Defendant also requests that we exercise our discretion and decide the issues presented for the guidance of future proceedings in the counties within the Fifth Appellate District. However, none of the issues presented are publishable for that purpose. For example, with regard to defendant's first contention, whether recommitment petitions must follow the same procedures as original proceedings, we recently decided this question in a published case. (*People v. Gary* (2000) 85 Cal.App.4th 207.) As to defendant's second contention, regarding the proof required on the issue of volitional impairment so as to comply with substantive due process, the court in *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1164 found the statute constitutional. The court held "the evidentiary methods contemplated by the Act are

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<sup>1</sup> In our letter we referred to *People v. Cheek* (2001) 25 Cal.4th 894, 903, where the court affirmed the dismissal of the appeal as moot because the defendant's confinement had expired during the pendency of the appeal. The court, however, considered the defendant's contention because the issue was "one likely to recur while evading appellate review [citations] and involves a matter of public interest [citation]." (*Id.* at pp. 897-898.)

sufficiently reliable and accurate to accomplish its narrow and important purpose-- confining and treating mentally disordered individuals who have demonstrated their inability to control specific sexually violent behavior through the commission of similar prior crimes.” (*Ibid.*) An opinion addressing defendant’s argument that the evidence was insufficient to prove volitional impairment in his case because his acts were “volitional”<sup>2</sup> would have no value as guidance in future proceedings. Finally, his contention that the SVP Act requires the prosecution to prove the prior offenses were “predatory” was recently rejected in *People v. Torres* (2001) 25 Cal.4th 680, 686.

In light of the above, this appeal is ordered dismissed as moot.

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WISEMAN, J.

WE CONCUR:

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VARTABEDIAN, Acting P.J.

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HARRIS, J.

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<sup>2</sup> The argument is as follows: “The evidence indicates (1) that appellant committed acts of child molestation in the past and (2) he expressed a view that sex [with] children was not inherently wrong. His acts were evidently volitional.”